

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAULA PAGONAKIS,

Plaintiff,

v.

EXPRESS LLC, a/k/a
LIMITED BRANDS, INC.,

Defendant.

)
)
)
) Civil Action
) No. 06-027
)
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Deposition of ELISE ZAPP taken pursuant to notice at the law offices of Aber, Goldlust, Baker & Over, 702 King Street, Wilmington, Delaware, beginning at 2:00 p.m. on Monday, February 26, 2007, before Kurt A. Fetzer, Registered Diplomate Reporter and Notary Public.

APPEARANCES:

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1 A. At the time I started at Christiana?

2 Q. Yes.

3 A. The store manager was Kristin Bosley.

4 Q. And just to clarify, any questions I'm going to
5 ask you now about the store I'm referring to the
6 Christiana store at which Paula Pagonakis worked.

7 A. Okay.

8 Q. So was Kristin Bosley then ultimately in charge
9 of that store?

A. Yes.

Q. And did you report to anybody else in the chain
of command?

A. Our district manager, Ana Klancik.

Q. Was Ms. Klancik the district manager at the
time you started at the Christiana store?

A. Yes.

Q. And did you report to anybody else?

A. You know, Ana had a boss who was a regional
manager, but I didn't have any interaction with them
really.

Q. Would that have been someone by the name of
Scott Miller?

A. He was a regional manager at one time. I don't
know if that was during that time.



1 Q. And did anybody report to you in your position
2 as a comanager?

3 A. Yes.

4 Q. Who would have reported to you?

5 A. The part-time salespeople would have reported
6 to me collectively with the other comanagers and
7 Kristin.

8 Q. You said there were other comanagers. Can you
9 tell me not who they were but, you know, how many
10 other comanagers there were?

11 A. No.

12 Q. Can you approximate how many other comanagers
13 there might have been?

14 A. Between five and seven.

15 Q. And were they all responsible for different
16 things or were some of them responsible for the same
17 things that you were?

18 MR. CAMPBELL: Again, you're asking her
19 when she first went back to Christiana?

20 MR. EHRENBURG: Correct.

21 MR. CAMPBELL: Okay.

22 A. Basically we were all responsible for different
23 things. Sometimes they overlapped.

24 Q. Okay. But there were between five and ten



1 Granite Run store, your position was comanager at the
2 Christiana store. Is that correct?

3 A. Correct.

4 Q. And in your time as a comanager at the
5 Christiana store, did the position of comanager within
6 the company change?

7 A. Yes. I'm not sure what you're asking because
8 other positions have changed. Are you talking about
9 BSL's?

10 Q. I'm just trying to figure out if what you did
11 and what your responsibilities were, if they were
12 generally the same at the time that you were working
13 at that store.

14 A. Yes.

15 Q. Yes, they were the --

16 A. Yes, they were the same.

17 Q. Okay. Did Paula Pagonakis report to you at any
18 point?

19 A. Yes.

20 Q. And do you know what her position was at that
21 time?

22 A. She was a part-time salesperson and then she
23 was a part-time BSL.

24 Q. And what is a BSL?



1 A. It's a brand sales lead. It's an Express term.
2 They are like assistants to the comanagers and the
3 store manager. They're part of the management team.
4 They have some management responsibilities.

5 Q. Okay. And as a brand sales lead Paula would
6 have reported to you because you were in charge of the
7 branding. Is that right?

8 A. Yes. And because I was a comanager and
9 comanagers are a step above brand sales leads.

10 Q. Are you currently employed by Express?

11 A. I am currently a comanager at the Express
12 store, yes.

13 Q. A comanager. Which store is that?

14 A. Christiana.

15 Q. Christiana. Is there a reason you went from
16 being the store manager at Granite Run to a comanager
17 at Christiana?

18 A. I chose to.

19 Q. Can you tell me why you chose to do that?

20 A. Because I like higher-volume stores and I
21 didn't like the Granite Run Mall and I didn't like the
22 low volume of the Granite Run Express. So I would
23 rather be a comanager in a high-volume store than a
24 store manager in a low-volume store, if you must know.



1 part-time brand sales lead to another position?

2 A. At some point in time she was promoted to
3 comanager.

4 Q. And as a comanager who would Paula have
5 reported to?

6 A. Kristin Bosley.

7 Q. And as a comanager who would have assigned
8 Paula tasks?

9 A. Kristin Bosley.

10 Q. Okay. Do you know whether there was any kind
11 of personnel files maintained with regard to Paula
12 while she was employed with Express?

13 A. There're personnel files on every associate
14 that is employed by Express, so yes.

15 Q. When you say, "associate," is an associate,
16 could that be a manager or is an associate just a --

17 A. Yes, it could be a manager. In terms of things
18 like personnel files, every person that works for
19 Express could be called an associate at that point.
20 Everyone that works for Express has a personnel file.

21 Q. And where would Ms. Pagonakis's personnel file
22 have been kept?

23 A. As a part-time sales associate and a brand
24 sales lead, her file would have been kept in the



1 MR. CAMPBELL: Okay.

2 BY MR. EHRENBERG:

3 Q. Now, at some point Paula was promoted to a
4 comanager. Is that correct?

5 A. Yes.

6 Q. And do you remember when she was made comanager
7 what her responsibilities were as compared to yours?

8 A. Part of her responsibilities was hiring,
9 talent.

10 Q. Do you know whether she was tasked with
11 anything else as a comanager?

12 A. She still had some responsibilities on the
13 sales floor like CSL'g and helping customers and
14 things like that.

15 Q. After one has been promoted to the position of
16 comanager, is there any type of training that one goes
17 through?

18 A. Yes.

19 Q. And can you just explain to the best of your
20 recollection what that training is?

21 A. After one's been promoted to a comanager?

22 Q. Or before. I guess is there any kind of
23 training before somebody can become a comanager or
24 after one becomes a comanager?



1 A. Yes. You have to pass a test. You have to
2 read some information and then be able to answer
3 questions about it. And then there is ongoing
4 training, different aspects of the business that we
5 might have meetings on, we might go over them in
6 meetings within our own store.

7 Q. Who provides that training?

8 A. The company.

9 Q. I guess within the company, let's start at the
10 point before somebody starts as a comanager, who
11 provides whatever training that individual would get
12 before they can start as a comanager?

13 A. Primarily the store manager. The store manager
14 might ask other fellow comanagers to help in the
15 training of a newly promoted or new comanager, but
16 primarily the store manager.

17 Q. In your position as a comanager during the time
18 when Paula was working with you, did you ever train
19 any other comanagers?

20 A. I can't remember right now. I'm not sure.

21 Q. Do you know whether Paula Pagonakis ever
22 received any training as a comanager?

23 A. I don't remember it.

24 Q. So you wouldn't remember whether you provided



1 Q. And did you ever express that belief to anybody
2 within Express?

3 A. Yes. I'm sure I did.

4 Q. Do you know to whom you expressed that feeling?

5 A. Kristin Bosley.

6 Q. And anyone else that you can remember?

7 A. No.

8 Q. And do you know whether Ms. Bosley had a
9 similar feeling?

10 A. You would have to ask Mrs. Bosley. Ms. Bosley.

11 Q. But you don't know from what you can remember
12 about your prior conversations with Ms. Bosley?

13 A. I know that Kristin had a hard time with a
14 comanager who could not fulfill her duties as a
15 comanager.

16 Q. Can you tell me how you and Paula got along on
17 a personal level?

18 A. We got along fine.

19 Q. Did you ever become aware of the fact that
20 Paula had any kind of medical condition or disability?

21 A. Yes.

22 Q. And can you tell me when you learned that?

23 A. Not specifically.

24 Q. Approximately? Was it before she left the



1 company?

2 A. Before.

3 Q. And do you remember how you learned of that
4 information?

5 A. No.

6 Q. Did you and Paula ever talk about any medical
7 condition or disability?

8 A. Yes.

9 Q. And can you just tell me -- I know it's a long
10 time ago. But generally do you remember what you
11 spoke about?

12 A. I remember Paula telling me that at one point
13 in her life she got in a car accident and after that
14 she had a hard time with certain things, specifically
15 I remember driving during the night or driving while
16 it was dark.

17 Q. And do you remember anything else that she told
18 you, other than that she had a hard time driving at
19 night?

20 A. That is what I remember.

21 Q. Were you aware that Paula's medical condition
22 makes it difficult for her to read?

23 A. No.

24 Q. Or that it sometimes causes her to become



1 being able to work from home some days?

2 A. There were accommodations made so she could
3 work from home some days because she could not drive
4 certain days.

5 Q. And do you know whether there was any
6 accommodation in terms of her being able to have a day
7 off every three or four days?

8 A. I don't know if that was an accommodation made
9 for her, but as comanagers we all have off every three
10 or four days.

11 Q. Were you aware of anything else such as her not
12 having to -- I'm sorry. This is before, before she's
13 a comanager.

14 So prior to her becoming a comanager, were
15 you aware of whether or not she was able to work or
16 have a day off after every three or four days?

17 A. I remember many accommodations being made for
18 her. I don't remember specifically whether she got
19 off every three or four days.

20 Q. Okay. Now, Paula has alleged in this lawsuit
21 that other employees or managerial people at Express
22 in the Christiana store made derogatory comments about
23 her disabilities or medical conditions.

24 Do you recall ever hearing anyone make



1 such a statement?

2 A. No.

3 Q. Did you ever make any such statement?

4 A. Derogatory remarks about her disability? No.

5 Q. Okay. So if Ms. Pagonakis has alleged in the
6 lawsuit that you did make such statements, you would
7 think that that's incorrect?

8 A. Yes.

9 Q. Now, Paula has also alleged in the lawsuit that
10 other employees and managers of Express made
11 statements that she was not management material
12 because of her inability to work regular hours. I
13 think we touched on this briefly.

14 But can you tell me if you have ever heard
15 anyone make such comments?

16 A. If I ever heard anyone say? Yes.

17 Q. Can you tell me who you heard or if you
18 remember who made those comments?

19 A. I cannot remember.

20 Q. Did you make any such comments?

21 A. I believe, sir, that she was not or could not
22 fulfill the duties of a comanager.

23 Q. I understand that. I guess I'm saying Paula is
24 saying that she heard, she or others heard people

